

**ONE HUNDREDTH LEGISLATURE - SECOND SESSION -  
2008**

**COMMITTEE STATEMENT**

**LB830**

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**Hearing Date:** January 30, 2008

**Committee On:** Health and Human Services

**Introducer(s):** (Lathrop)

**Title:** Adopt the Prescription Drug Cost Savings Act

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**Roll Call Vote - Final Committee Action:**

Placed on General File with Amendments

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**Vote Results:**

7 Yes	Senators Erdman, Gay, Hansen, Howard, Johnson, Pankonin, Stuthman
0 No	
0 Absent	
0 Present, not voting	

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**Proponents:**

Senator Lathrop  
Jennifer Carter  
Mark Intermill  
Vivianne Chaumont

**Representing:**

Introducer  
Nebraska Appleseed  
AARP  
Nebraska Department of Health and Human  
Services

**Opponents:**

William J. Mueller  
  
Joni Cover  
Russ Svoboda

**Representing:**

Pharmaceutical Research and Manufacturers  
of America  
Nebraska Pharmacists Association  
Sanofi-Aventis

**Neutral:**

**Representing:**

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**Summary of purpose and/or change:**

LB 830 adopts the Prescription Drug Cost Savings Act (act). The bill contains legislative findings (sec. 2) and defines terms (sec. 3).

The bill requires the chief executive officer (CEO) of the Department of Health and Human Services (department) to negotiate prescription drug discounts or rebates from drug manufacturers and labelers. A manufacturer or labeler selling prescription drugs in Nebraska is permitted to voluntarily negotiate (1) supplemental Medicaid drug rebates that are greater than those required under existing federal law, (2) discounts or rebates for the Healthy Nebraska Rx Card Program, and (3) discounts or rebates for any other state program that pays for or acquires prescription drugs (sec. 4).

In negotiating rebate terms, the CEO must consider the rebate calculated under the federal Medicaid drug rebate program under current applicable federal law, and any other available information on prescription drug prices, discounts, and rebates.

The bill requires the CEO to establish a preferred drug list for the Healthy Nebraska Rx Card Program that includes, but is not limited to: (1) drugs listed on the state Medicaid preferred drug list; (2) chemotherapy; (3) antiretroviral drugs; (4) immunosuppressive drugs; and (5) any other drugs as determined by the chief executive officer, except that antipsychotic drugs and antidepressant drugs may not be included on the preferred drug list.

In determining whether to add other drugs to the preferred drug list, the CEO may consider the following factors: (1) therapeutic value for the disease or condition under treatment; (2) clinical efficacy; (3) safety; (4) cost; and (5) other relevant factors as determined by the CEO (sec. 6).

The CEO must consider whether to place a manufacturer's or labeler's prescription drugs on the prior authorization list for the state Medicaid program and take similar actions involving prior authorization or formularies for any other state-funded or state-operated prescription drug program if: (1) the chief executive officer and a manufacturer or labeler fail to reach agreement on the terms of a supplemental Medicaid rebate or a price discount or rebate for the Healthy Nebraska Rx Card Program; and (2) the price discounts or rebates offered by the manufacturer or labeler are not as favorable to the state as the prices provided to covered entities under current applicable federal law.

The names of manufacturers and labelers that do not enter into rebate agreements is public information, and the department must publicly release the information and actively distribute it to doctors, pharmacists, and other health care professionals.(sec. 7)

The bill requires the department to establish the Healthy Nebraska Rx Card Program as a state pharmaceutical assistance program under applicable federal law, to provide price discounts to program participants for drugs covered by a rebate agreement. The department must contract with wholesalers and participating retail pharmacies to provide the discounts, using funds from negotiated rebates. (sec. 8)

The price discounts received by Healthy Nebraska Rx Card Program participants must be calculated by the CEO on a quarterly basis and be approximately equal to the

average amount of the negotiated drug rebate minus an amount to cover the reasonable administrative costs of the program. (sec. 9)

To be eligible to participate in the program, one must be a resident of Nebraska and eligible for Medicare or have a family net income of less three hundred percent of the federal poverty level. (sec. 10) A person is ineligible for the program if he or she is Medicaid-eligible or covered by an insurance policy that provides benefits for prescription drugs equal to or greater than the benefits provided under the program. (sec. 11)

The department is required to establish simple enrollment procedures for the program and undertake outreach efforts to build public awareness and maximize enrollment. (sec. 12)

Each participating retail pharmacy must disclose to each program participant the amount of his or her savings as a result of the price discounts provided by the program pursuant to rules and regulations of the department. (sec. 12)

The bill requires participating retail pharmacies to verify to the department the amounts charged to program participants and nonparticipants and provide the department with utilization data necessary to calculate rebates from manufacturers and labelers. The department is required to protect the confidentiality of all information subject to confidentiality protection under state or federal laws, rules, or regulations. The department is prohibited from imposing any transaction charges on wholesalers or participating retail pharmacies submitting claims or receiving payments under the program. (sec. 12)

The department must either pay wholesalers or participating retail pharmacies in advance for program discounts or reimburse them weekly. The department may require a wholesaler or participating retail pharmacy to separate its inventory of prescription drugs under the program from the rest of its drug inventory and to maintain records of acquisition and disposition of prescription drugs under the program separately from its other records. (sec. 13)

The bill provides procedures for resolving disputes or discrepancies in rebate amounts under the program. (sec. 14)

If there is a discrepancy in favor of the manufacturer or labeler between the amount claimed by a wholesaler or a participating retail pharmacy and the amount rebated by the manufacturer or labeler, the department, at its own expense, may hire a mutually agreed-upon independent auditor. If a discrepancy still exists following the audit, the manufacturer or labeler must justify the reason for the discrepancy or pay the department any additional amount due. (sec. 14)

If there is a discrepancy against the interest of the manufacturer or labeler in the information provided by the department to the manufacturer or labeler regarding the manufacturer's or labeler's rebate, the manufacturer or labeler, at the manufacturer's or labeler's expense, may hire a mutually agreed-upon independent auditor to verify the accuracy of the data supplied to the department. If a discrepancy still exists following the audit, the department must justify the reason for the discrepancy or provide a refund to the manufacturer or labeler. (sec. 14)

The bill requires the department to report the enrollment and financial status of the program and report savings from supplemental Medicaid rebates to the Clerk of the Legislature by February 1 each year. (sec. 15)

The CEO may combine drug pricing negotiations for the Healthy Nebraska Rx Card Program and one or more other state programs to maximize drug rebates if he or she finds that it is beneficial to do so. (sec. 16)

The department may seek any waivers of federal law, rule, or regulation necessary to implement the Prescription Drug Cost Savings Act. (sec. 17)

The department may adopt and promulgate rules and regulations to carry out the Healthy Nebraska Rx Card Program Act. The CEO must administer the act in a manner that benefits the largest number of Nebraska residents while preventing the act from being preempted by federal law or regulation, including, if necessary, but not limited to, separating Medicaid from non-Medicaid negotiations and prior authorization or formulary decisions or limiting participation in the program to a smaller segment of Nebraska residents. The department must conduct ongoing quality assurance activities similar to those used in the state Medicaid program. (sec. 18)

The bill provides that price discounts to participants in the Healthy Nebraska Rx Card Program will begin on January 1, 2009. (sec. 19)

The bill creates the Healthy Nebraska Rx Fund, consisting of money collected by the department under the act and any funds appropriated by the Legislature. (sec. 20)

The bill provides legislative intent to appropriate one million dollars for FY2008-09 to carry out the act.

The bill also requires the department to seek a Medicaid waiver to establish a pharmacy discount program modeled after the Healthy Maine Prescriptions Program. If the waiver is approved, the department must implement the program after consultation with the Health and Human Services Committee of the Legislature.

The bill has an operative date of July 1, 2008. (sec. 24)

The bill contains a severability clause (sec.25) and an emergency clause (sec. 27).

#### **Explanation of amendments, if any:**

The committee amendment (AM 2357) replaces the bill as introduced and is narrowly confined to the establishment of a preferred drug list and the incorporation of other cost-saving measures under the state Medicaid program. The amendment adopts the Medicaid Prescription Drug Act, establishes the purpose of the act, and defines terms

The amendment requires the Department of Health and Human Services (department) to establish and maintain a preferred drug list for the medical assistance program (Medicaid). The amendment requires the department to establish a pharmaceutical and therapeutics committee to advise the department on all matters relating to the establishment and maintenance of the list. Membership of the committee is prescribed. The department is required to adopt and publish policies and procedures for the preferred drug list.

The department and the committee are required to consider all therapeutic classes of drugs for inclusion on the preferred drug list, except for antidepressant, antipsychotic, and anticonvulsant prescription drugs.

The department must include a prescription drug on the preferred drug list if the prescription drug is therapeutically equivalent to or superior to a prescription drug on the list and the net cost of the new prescription drug is equal to or less than the net

cost of the listed drug, after consideration of applicable rebates or discounts negotiated by the department. If the department finds that two or more prescription drugs under consideration for inclusion on the preferred drug list are therapeutically equivalent, the department must include the more cost-effective drug or drugs on the list.

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Senator Joel Johnson, Chairperson